

Quarterly Report
OF THE
ATTORNEY GENERAL
OF
ALABAMA



FOR THE PERIOD
FROM JULY 1, 1971
THROUGH SEPTEMBER 30, 1971
VOLUME 144

WILLIAM J. BAXLEY, Attorney General

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Q U A R T E R L Y R E P O R T

of the

ATTORNEY GENERAL

of

A L A B A M A

For the Period

From July 1, 1971

Through September 30, 1971

**TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS OF
ALABAMA:**

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from July 1, 1971, through September 30, 1971, is published in compliance with the provisions of Title 55, Section 228, Code of Alabama 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State, and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy county solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

WILLIAM J. BAXLEY

Attorney General

WILLIAM J. BAXLEY
Attorney General

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Deputy Attorney General

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Executive Assistant

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OPINIONS

July 8, 1971

Honorable Wilson Baker
Sheriff, Dallas County
Post Office Box 531
Selma, Alabama 36701

Costs and Fees—Counties—Dallas County—Insane Persons
—Sheriffs.

Under the provisions of Act No. 1170, Acts of Alabama 1969, Volume 3, page 2179, the sheriff and his deputies are not entitled to collect and retain mileage expenses for returning or transferring insane persons to or from points outside the county.

Opinion by Attorney General Baxley.

Dear Sheriff Baker:

I have your request for an opinion wherein you state that Act No. 1170, Acts of Alabama, Regular Session 1969, Volume 3, page 2179, approved September 13, 1969, has been interpreted to allow a sheriff to charge mileage allowance even though he is using a county vehicle with county purchased gasoline for transporting insane persons to the State Hospital.

You ask if this interpretation of the Act is correct. It is my opinion that your inquiry must be answered in the negative.

This office has previously ruled in an opinion to the Honorable E. W. Enslin, Chairman, Elmore County Commission, on January 15, 1971, that for the removal of insane persons to the State Hospital the sheriff is entitled to ten cents (\$.10) per mile even though he uses a county vehicle in such removal.

After further consideration of the pertinent Sections of the Act, I view this former opinion as incorrect and the same is hereby withdrawn and overruled.

Accordingly, a sheriff is not entitled to mileage allowance under the Act for the removal of insane persons to the State Hospital where a county vehicle is used for that purpose.

Sincerely yours,

WILLIAM J. BAXLEY
Attorney General

July 9, 1971

Honorable Mabel S. Amos
Secretary of State
State of Alabama
Montgomery, Alabama 36104

Elections—Voters & Voters List—Secretary of State.

Persons 18-20 years of age are not required to re-register to vote.

Opinion by Attorney General Baxley.

Dear Mrs. Amos:

I have your letter of July 8, 1971, which reads as follows:

"I am enclosing a copy of an interim memorandum dated July 6, 1971, which I have sent to Boards of Registrars in response to many inquiries, pending an official ruling as to the re-registration of those persons 18-20 years of age who have registered for federal elections only.

"I would respectfully request your opinion as to whether or not the amendment which was proclaimed ratified on June 30, 1971, carries a retroactive provision to cover those who previously registered.

"If it does not carry such a retroactive provision, it appears to me that some enabling action may be necessary. The following three avenues have been suggested:

"(1) An enabling act of the Legislature, such as was passed by the State of Connecticut;

"(2) An opinion of the Attorney General as to the validity of the the registration of those persons 18-20 years of age for all elections;

"(3) Re-registration.

"I shall appreciate your early ruling on the answers to these questions."

My answer to your inquiry is in the negative.

The persons referred to in your request were registered under an Act of Congress, Pub. L. 91-285, 84 Stat. 314, providing that persons eighteen years old and upward were entitled to register and vote in Federal elections. These persons appeared before the several boards of registrars of the State, were placed under oath, were furnished with and requested to fill out the standard questionnaire which is given by the board of registrars to all prospective voters regardless of age. Upon examination of these applications and a review of the questionnaire, the

various boards of registrars found that these persons were qualified to vote in all respects with the one exception, that they were not twenty-one years of age as required by the Constitution of the State of Alabama.

This disability of non-age has now been removed by the adoption of Amendment 26 to the Constitution of the United States of America. This amendment was ratified by the Legislature of the State of Alabama by H.J.R. 10, a copy of which is attached to this opinion and made a part hereof.

You, are, therefore, advised in view of the fact that the board of registrars of the several counties having found the persons were considered to be qualified in every respect to vote under the laws of the State of Alabama, with the one exception that they were not twenty-one years of age, and since this restriction has been removed by the ratification of Amendment 26 to the Constitution of the United States, no good purpose would be served by requiring these persons to re-register. Title 17, Section 36, Code of Alabama 1940.

You are, therefore, advised that the several boards of registrars of the state will not be required to re-register these persons who have registered under the provisions of the Voting Rights Act Amendments of 1970, Pub. L. 91-285, 84 Stat. 314, and have been issued certificates of registration to vote in Federal elections. The simplest way to handle this proposition is for the several boards of registrars to pull the index cards for these persons here considered from their files and indicate thereon that these persons are now entitled to vote in all elections, and if they desire they may issue these persons new election certificates so indicating. In those counties in which index card systems are not used, these persons should be transferred on the registration book from the Federal list to the State list.

Yours very truly,

WILLIAM J. BAXLEY
Attorney General

July 13, 1971

Honorable Earl T. Rogers
Tax Assessor of Jefferson County
106 Court House
Birmingham, Alabama

Taxation — Tax Assessors —

Homestead Exemption — Act 125, Special Session 1971,
Legislature of Alabama.

1. A sworn statement on the face of the assessment by the taxpayer that he is 65 or older is sufficient proof that he is of the age claimed.
2. Where property is jointly owned by husband and wife with right of survivorship, the age of the eldest shall determine whether the homestead exemption applies.
3. Where ownership is vested in the wife, the age of the wife shall determine whether the homestead exemption applies.

Opinion by Assistant Attorney General Burson.

Dear Sir:

Your inquiry of May 31, 1971, in regard to Act 125, Special Session 1971, Legislature of Alabama, poses, in substance, the following questions:

1. Will a sworn statement by the taxpayer on the face of his assessment be sufficient proof of his age?
2. If property is owned jointly by husband and wife with right of survivorship whose age shall govern the application of the homestead exemption?
3. If property is owned by the wife who is under 65 and she lives with her husband who is over 65, whose age shall govern the application of the homestead exemption?

The answers to your questions are as follows:

First, a sworn statement by the taxpayer on the face of his assessment is sufficient proof of the age claimed. An examination of prior opinions of the Attorney General indicates that this question has not been previously considered. However, as the taxpayer is required by law to swear to the correctness of his assessment, the inclusion of a statement to the effect: "My age is ———," in the body of the instrument prior to the signature and attestation would be adequate proof that he was of the age he claimed, and, if over 65, entitled to the homestead exemption.

Second, the age of the eldest shall govern in determining the application of the homestead exemption where the property is jointly owned by husband and wife with right of survivorship. Prior Opinions of the Attorney General have not considered this point, however, Opinion of the Attorney General, Biennial Report 1936-38, page 398, is of some assistance. The opinion establishes three points inter alia that help in answering the immediate question: (a) the husband and wife may claim a homestead exemption where the property is jointly owned; (b) the wife may claim a homestead exemption out of her property on which she and her husband live even though the husband owns a contiguous tract; and (c) the words "head of the family" as used in the

homestead exemption act prior to amendment means that only one homestead exemption can be claimed. Therefore, either the husband or wife can claim. It follows therefore that the words "head of the family" as used in Act, No. 125, supra, also allow husband or wife to claim the exemption on jointly-owned property. Ownership determines the right to claim the exemption, therefore, either the husband or the wife may claim the exemption when he or she reaches 65.

Third, the age of the wife shall govern in determining the application of the homestead exemption in instances wherein the wife owns the property on which she and her husband live. It is reiterated that ownership is controlling and, therefore, the wife as the owner must be 65 before the exemption is applicable.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

July 15, 1971

Honorable Fred Ray Lybrand
Senator, Ninth District
Senate Chamber
C A P I T O L

Officers & Offices—Legislature—Senate—Constitutionality.

On absence of Lt. Governor for more than a few hours,
President Pro tem presides.

Opinion by Chief Assistant Attorney General Turner.

Dear Senator Lybrand:

I have your request for an opinion of this office wherein you ask if the Lieutenant Governor of the State of Alabama may designate another member of the Alabama Senate, other than the elected president pro tempore of the Senate, to preside over that body during his absence. You further state that the Lieutenant Governor will be absent from the State on July 15, and that the Senate will, at that time, be in session and in deliberation, and that he has appointed a member other than the president pro tempore to preside.

In the past, this office has been most hesitant to render a ruling on a matter of internal operation of a legislative body and if afforded the option to decline to issue a ruling in this matter, we should undoubtedly do so. We are, however, bound by constitutional and statutory duty to render a opinion on each question properly presented and in light of the present confusion and recognizing our sworn duty, we render the following opinion.

There is no conflict between Rule No. 39, Rules of the Senate of the State of Alabama and Section 51 of the Constitution of Alabama 1901. Rule 39 states that in the absence of the President, the President pro tempore shall preside over the Senate; but the President shall have the right to name a member to perform temporarily the duties of the Chair.

Section 51 of the Constitution of Alabama 1901, states that the Senate, at the beginning of each regular session, and at such times as may be necessary, shall elect one of its members President pro tem, thereof, to preside over its deliberations in the absence of the Lieutenant Governor.

Study of these two provisions reveal that the key word is contained in Rule 39, wherein it states that the appointed member is to perform **temporarily**.

It is my opinion that Rule 39 has application when the President of the Senate will be absent for only a very limited length of time. This length of time should be more properly calculable in minutes rather than hours or days. Rule 34, Rules of the Senate, reflects that no Senator may absent himself from the service of the Senate for as long as one day without first obtaining leave of the Senate. This indicates that the critical length of time of absence under the Rules of the Senate is less than one day.

The nature of the elected status of the President pro tem clearly establishes the desirability of his presiding during any absence of the President for more than a matter of a few minutes or a few hours.

Rule 39 has no application if the President is to be absent for more than a few hours while the Senate is in session. In that instance, Section 51 of the Constitution of Alabama 1901, clearly dictates that the President pro tem shall preside.

This office is particularly concerned with and vitally interested in the operation of the Alabama Legislature for we are many times called upon to defend the actions of that body in the courts of this State and nation. Accordingly, we point out that the deliberations and actions of each House are, indeed, serious and should be undertaken only with an attitude which encourages and promotes this atmosphere.

The good of the State and concern for the citizens thereof demand that each legislator arise above petty squabbles and foolish differences. Each of us in State service must respond to the command to put away childish things.

It is my opinion that if the Constitution of Alabama is disregarded and the officer designated by that document does not preside over the Senate, grave questions of validity would attach to each and every action taken by that body while so constituted. This would not be limited to actual floor activity but would spill over and taint any committee action

and generally cast a cloud over the legality of the entire operation of the Senate.

Sincerely,

WILLIAM J. BAXLEY
Attorney General

July 27, 1971

Mr. Roy C. Baxter
Houston County Tax Assessor
Dothan, Alabama 36301

Taxation—Tax Assessors—Motor Vehicles—Ad Valorem Taxes.

Procedure for assessing out-of-state vehicle and paying tax outlined.

Opinion by Assistant Attorney General Burton.

Re: Levy, Under Title 51, Section 704, As Amended, Of Ad Valorem Taxes On Used Motor Vehicles Brought Into Alabama From Another State

Dear Sir:

Receipt is acknowledged of your letter of July 20, 1971, addressed to the Attorney General, and in which you have requested his opinion concerning the above subject matter.

Your questions are, as follows:

“(1) - If an individual, firm or corporation brings a motor vehicle into the State of Alabama from another State after the beginning of Alabama's tax year and the tag on the motor vehicle has expired prior to the beginning of Alabama's tax year or prior to its entry into the State of Alabama, is the motor vehicle taxable under Alabama's tax laws upon its entry into the State of Alabama.

“(2) - If an individual, firm or corporation in Alabama purchases a used motor vehicle from an out of State dealer which furnishes the purchaser with a bill of sale only, is the motor vehicle taxable under Alabama's tax laws upon its entry into the State of Alabama.”

Your first question is answered to the effect that the ad valorem tax would attach on the vehicle during the quarter of the tax year which the vehicle is brought into the State and is to be measured by the number of quarters still left in the tax year, but said tax would not be payable until the following October 1.

Under Title 51, Section 704, as amended, Code of Alabama 1940, Recompiled 1958, the ad valorem tax on automobiles is levied on a quarterly basis, depending on the quarter of the tax year (October 1 through September 30) that the vehicle involved was first brought into the State. That is, if the vehicle to which you refer was brought into the State in July, 1971, the ad valorem tax would attach thereon only for the one remaining quarter of the current tax year or for the last three months of the tax year. However, the tax would not be payable until this coming October 1, 1971. See Quarterly Reports of the Attorney General, Vols. 110 and 108, pages 24 and 7, respectively.

However, it should be pointed out that the ad valorem tax and the license tax on automobiles are two separate and distinct levies. Therefore, under the situation as is related by you, the license would be due, and the car owner would be required to purchase an Alabama license tag immediately upon said automobile being brought into this State, in view of the fact that it does not have a current tag from any other state.

At the time, however, of applying for the license tag, Section 704 expressly provides that the ad valorem tax be paid on the vehicle or that you as tax assessor issue to the owner of the vehicle a certificate to the effect that no ad valorem tax is due thereon at the time. Section 704 expressly forbids the Judge of Probate to issue a license tag for a vehicle, unless the applicant presents to him a tax receipt showing the tax has been paid, or a certificate from you as tax assessor to the effect that no ad valorem tax is due on the vehicle at the time.

Your second question is not exactly clear. However, after talking to your office over the telephone last week, it appears that you are referring to the methods of proof on the part of a used car owner which might be used to establish to the satisfaction of the tax assessor the true date that a used car was first brought into this State for the purpose of the tax assessor ascertaining the proper quarter of the tax year, which is applicable in order that he can properly assess the tax.

While I cannot categorically answer your question, as the necessary proof would depend on the facts in each instance, it does not appear as a practical matter that a bill of sale from the used car dealer to the owner of the vehicle executed in another state, standing alone, would be sufficient proof as to when the vehicle involved was actually brought into Alabama. However, the bill of sale, together with a completed Motor Vehicle Assessment Tax Receipt and Tag Application form (which forms are furnished to all tax assessors by the State Department of Revenue), might be sufficient to establish to your satisfaction the date that the vehicle was first brought into this State in most cases, particularly if the form is properly filled out by the owner of the vehicle and is signed by him under oath, as is provided thereon.

In this respect, it appears that the following provision contained in Title 51, Section 704(a), as amended, *supra*, has been the source of

some confusion to both your office and some of the State Examiners:

“ . . . or in the case of a used car brought into the state from any state which provides that upon sale or transfer of a car, the tags are either surrendered to the appropriate authority or subsequently reusable by the seller or transferor, in which case the assessor shall be furnished a bona fide certificate of title, properly assigned, showing when the car was sold to an individual, firm, corporation or association, living or operating in this state. If such tag number or bill of sale or certificate of title is not furnished, **the vehicle will be presumed to have been in the state for the entire year** for which taxes are being assessed and taxes assessed for the entire year.” (Emphasis Supplied.)

Alabama does not have a motor vehicle title law, therefore, insofar as pertinent to your question, Section 704 relates only to the levy of the ad valorem tax on motor vehicles and the means of possible proof on the part of the owner of a used car to establish when it was first brought into Alabama. It does not, and could not, relate as a part of Section 704 to the perfecting of the title. The presumption then could be nothing more than a prima facie presumption and a rebuttable one. **Morgan v. State**, 280 Ala. 414, 194 So. 2d 820. The title certificate from some other state referred to then is only one means of proof that might be used. It certainly would not be the exclusive means, and in the majority of cases would be of little or no value by itself in proving when the used car was first brought into the State.

Where the owner of the used vehicle is unable to prove to your satisfaction when the used vehicle was first brought into the State during the tax year, then your only alternative under Section 704 is to assess the vehicle for ad valorem tax for four quarters or for the entire year. See Quarterly Report of the Attorney General, Volume 138, page 13.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

July 28, 1971

Honorable LeRoy Brown, Superintendent
State Department of Education
State Office Building
Montgomery, Alabama 36104

Schools—Trade Schools and Junior Colleges—State Board
of Education.

Procedure for naming junior college president outlined.

Opinion by Assistant Attorney General Madison.

Dear Dr. Brown.

Your letter of July 22, 1971, is as follows:

"At the meeting of the State Board of Education held on July 28, 1971, the question was raised as to who has the authority to nominate a president of a junior college. Section 509(96) states, ' . . . The state board of education, **upon recommendation of the state superintendent of education**, shall: Make rules and regulations for the government of such additional institutions; prescribe the course of study to be offered and the conditions for granting certificates or diplomas; **appoint the president of each such additional educational institution. . . .** '

"Our questions are as follows:

"1. Does the state superintendent of education have the authority to nominate a president before he may be considered by the state board of education?

"2. Does a member of the state board of education have the authority to nominate a president of a junior college?"

In answer to your two questions, I beg to advise that Title 52, Section 509(96), Code of Alabama 1940, Recompiled 1958, does not deal with nominations.

The statute deals with the appointment of a president upon the **recommendation** of the State Superintendent of Education. This requires joint action by the State Superintendent of Education and the State Board of Education for the appointment to be valid. See **Quarterly Report of Attorney General**, Volume 88, page 14; Volume 99, page 21; **Roberts v. State**, 228 Ala. 222, 153 So. 432.

In the interest of proper record keeping, I feel that the recommendation should be in writing.

Cordially yours,

WILLIAM J. BAXLEY
Attorney General

July 29, 1971

Honorable LeRoy Brown
State Superintendent of Education
State Office Building
Montgomery, Alabama 36104

Schools—State Board of Education—State Superintendent
of Education—Expenses.

Certain expenses only of state board approved.
Opinion by Assistant Attorney General Webb.

Dear Dr. Brown:

I have your request for opinion dated June 21, 1971 on behalf of the State Board of Education as to members of the State Board of Education receiving compensation and expenses for attending business of the state department other than the regular meetings of the State Board of Education. The specific questions are:

- "1. Can individual members who visit schools be paid for such visiting?
- "2. Can expenses incurred by Board members who attend a graduating exercise at a school, technical institute or junior college be legally compensated by the state?
- "3. Does the Vice President of the Board assign duties to individual Board members as committee members and request that they visit schools for investigative purposes and receive compensation for such duties?"

In your request for opinion, you state that compensation as interpreted in this communication means per diem, telephone expenses and travel expenses. For reasons explained further in this letter, I cannot use this interpretation and I feel I must consider the question of compensation and expenses separately.

The State Board of Education was reconstituted under the provisions of Amendment 284 to the Constitution of Alabama 1901 (adopted December 16, 1969); however, the Legislature, in passing Amendment 284 and other legislation dealing with the State Board of Education, failed to pass any new statute dealing with expenses of the members of the State Board of Education. As stated by you, Title 52, Section 13, Code of Alabama 1940, Recompiled 1958, presently provides:

"The members of the state board of education shall receive a per diem compensation of ten dollars for each day of actual service and for a total of not more than twenty-five days in any fiscal year, and their actual traveling and other expenses incurred in attending meetings and transacting the business of the board."

Before going further with your specific questions, I must state that in my opinion that portion of Title 52, Section 13, providing for actual traveling expenses of the members of the Board of Education has been repealed and superseded by provisions of Act No. 470, Acts of Alabama 1969, page 912. Cf. Quarterly Report of Attorney General, Volume 141, page 34, and citations contained therein. Act No. 470, *supra*, has been codified as Sections 488(1) through 488(4), Title 55, Code of Alabama 1940, Recompiled 1958 (1969 Cumulative Pocket Parts). This act provides the maximum amount allowable to a person traveling inside the State of Alabama in the service of the State or any of its departments, institutions or other agencies and, in my opinion, your questions, insofar as they pertain to the travel expenses of the board members,

deal with a proper interpretation of the provisions of Act No. 470, *supra*.

The Constitution, statutes and various court decisions lead me to the inescapable conclusion that the State Board of Education must act as a board and not as individual members, and I am, therefore, of the opinion that visits by individual members to schools over the State attending a graduating exercise or other functions at such schools can constitute travel "in the service of the State" within the meaning of Act No. 470, *supra*, only when such travel has been authorized by the board and is made within the framework of its rules and regulations. I do not believe that any individual member of the State Board of Education may on his own initiative visit various schools and attend various functions and expect the payment of his expenses or compensation. In my opinion, an orderly process of law would require that the State Board of Education establish rules and regulations as to travel of its members authorizing such travel and establish some method of control or limitation by an internal procedure.

The discussion above, though relating to travel expenses paid under the provisions of Act No. 470, *supra*, would, in my opinion, be equally applicable to the salary or compensation of ten dollars per day provided for under Title 52, Section 13, *supra*. This section provides for the compensation to be paid "for each day of actual service." Actual service, as the term is used, in my opinion, does not require an actual meeting of the board but would include authorized travel of the members of the board subject, of course, to the twenty-five-day limitation for such compensation.

Extraordinary expense; i.e., telephone, would, when detailed and accepted by the board, also constitute legitimate items of reimbursement.

If I may be of any further assistance please let me know.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

July 30, 1971

Dr. Harry M. Philpott
President, Auburn University
Auburn, Alabama

Dr. David Mathews, President
The University of Alabama
University, Alabama 35486

Schools—Colleges & Universities—University of Alabama—
Auburn University—Expenses.

Authority of Boards of Trustees over non-appropriated
funds defined.

Opinion by Attorney General Baxley

Gentlemen:

We have received your request for an official opinion dated June 7, 1971, in which you ask the following questions:

"Are the boards of trustees of Auburn University and The University of Alabama vested with the lawful authority to determine whether institutional purposes are served by expenditures from non-appropriated institutional funds of their respective institutions?

"Is opinion of Attorney General to Draughon and Eagerton, dated August 26, 1954, overruled or rejected by your opinion to Philpott and Mathews, dated January 21, 1971?"

In dealing with questions relating to the University of Alabama and Auburn University, it is necessary to point out that these two institutions were created by the Alabama Constitution and the authority of their Boards of Trustees is derived from the Constitution rather than from legislative grant. Constitution of 1901, Section 264 and Amendment 161. Because of the grant of authority to them by the Constitution, the Board of Trustees of Auburn University and The University of Alabama are vested with the lawful authority to determine whether institutional purposes are served by expenditures from non-appropriated institutional funds of their respective institutions. The answer to your first question is in the affirmative.

In response to your second question, the opinion to Draughon and Eagerton, dated August 26, 1954, contains the following statement:

"The second classification of operating revenue received by the institution consists of those funds accruing to the school from other sources, such as gate receipts of athletic contests, student fees, etc., which funds are the unconditional property of the institute and are expended under the exclusive direction and control of the Board of Trustees, **subject to the limitation that same be applied to benefit the interests of the institution, and subject also to such valid legislative enactments as may affect the same.**" (Emphasis supplied.)

The opinion to Philpott and Mathews, dated January 21, 1971, contains the following statements:

"... that the Boards of Trustees of Auburn University and The University of Alabama do not have the **exclusive** management and control of non-appropriated institutional funds, such as athletic receipts."

"Any expressions in former opinions contrary to the above two rulings are hereby expressly rejected."

The wording in the opinion to Draughon and Eagerton, dated August 26, 1954, which is underlined above, recognizes the inherent limi-

tation on the Constitutional grant of exclusive management and control of non-appropriated institutional funds. The language quoted above in the opinion to Philpott and Mathews, dated January 21, 1971, merely calls attention to the limitations contained in the opinion to Draughon and Eagerton dated August 26, 1954 and should not be read as attempting to create additional limitations. The answer to your second question is "no." The opinion to Draughon and Eagerton dated August 26, 1954, is neither overruled nor rejected by the opinion to Philpott and Mathews, dated January 21, 1971.

I further understand that you are specifically concerned with the question of whether the Boards of Trustees of Auburn University and The University of Alabama have the lawful authority to authorize payment from non-appropriated funds for actual expenses incurred in activities related to the production of non-appropriated institutional funds of their respective institutions. More specifically, does Act No. 470, Acts of Alabama 1969, page 912, apply to immediate members of the Athletic Department who are personally engaged in the preparation for a certain game, individuals who have direct responsibilities in the policy making of the Athletic Department and members of the varsity squad while traveling within the State to be present for a certain game. The answer to the first question is "yes" and the answer to the second question is "no." Recognizing the realities of modern intercollegiate athletics, such events produce substantial non-appropriated funds and the attendance of the persons listed above is necessary at these events. Their expenses are expenses directly required in the production of the non-appropriated funds and are differentiated from those dealt with in the opinion to Mr. A. W. Steineker, Jr., dated March 5, 1969 (Quarterly Report of Attorney General, Volume 134, page 34).

Yours very truly,

WILLIAM J. BAXLEY
Attorney General

August 3, 1971

Mr. Charles R. Butler, Jr.
District Attorney

Thirteenth Judicial Circuit
Mobile County Court House
Mobile, Alabama 36601

Criminal Law — Extradition — District Attorneys —
Expenses.

Travel expenses in extradition, where continuance is
involved, approved.

Opinion by Assistant Attorney General Price.

Dear Mr. Butler:

In your recent request for an opinion of this office you posed the following questions concerning the interpretation of Title 15, §§ 72 and 75, Code of Alabama 1940 (Recomp. 1958):

- “(1) When a foreign state requests the presence of the officer named in an extradition warrant to appear at an extradition hearing to take charge of the defendant, and when the guard attends the hearing, but at the hearing the judge grants a continuance, and the guard returns to Alabama, then subsequently (in one case five days later) returns to the foreign state to bring the prisoner back to Alabama, will the state pay the expenses of the guard on both trips?”
- “(2) When an officer authorized in a warrant to return a prisoner to Alabama goes to the extradition hearing in the foreign state, and the judge orders the defendant extradited and turned over to the guard, if the defense is then allowed ten days within which to file an appeal, and the guard returns to Alabama without the prisoner, but subsequently goes back to the foreign state and gets the prisoner, is he authorized his expenses for both trips?”

My opinion is that the guard is due expenses in both situations outlined above. Several prior opinions of this office indicate that these statutes (especially § 72, *supra*) are intended to reimburse the sheriff or agent for travel done as a necessary incident to the extradition processes. See Quarterly Report of Attorney General, Volume 14, page 247; Quarterly Report of Attorney General, Volume 17, page 368.

Travel under the circumstances in your questions to this office, seems to clearly be a necessary part of extradition attempts.

I hope that I have answered your questions, and if you need further assistance, please call on me.

Sincerely,

WILLIAM J. BAXLEY
Attorney General

August 10, 1971

Honorable D. L. Brock
Assistant Chief Examiner
State Department of Examiners
of Public Accounts
Montgomery, Alabama 36104

Counties—County Boards of Education—Employment—
Employers and Employees—Jurors and Juries—State
and State Departments—Schools.

1. Provisions of Act No. 619, Acts of Alabama 1969, page 1126 (Title 30, Section 7(1), Code of Alabama 1940, Recompiled 1958, 1969 Cumulative Pocket Parts), provide a minimum standard of pay for employees serving on jury duty.

2. Act No. 619, *supra*, does not require a public agency to deduct from an employee's salary the amount received by such employee while serving on jury duty if, by contract of employment or by rule or regulation, such public agency has provided for the payment of full pay for such time.

Opinion by Assistant Attorney General Webb.

Dear Mr. Brock:

I have your letter of June 21, 1971, in which you request my opinion as follows:

"During the course of recent audits of county boards of education, county governing bodies and the State of Alabama, we have noted a lack of uniformity in application of provisions of Act No. 619, Acts of Alabama 1969, page 1126 (Title 30, Section 7(1), Code of Alabama Recompiled 1958, 1969 Cumulative Pocket Supplements).

"The question arising is whether the provisions of Act No. 619, *supra*, provide a minimum requirement of law or a maximum requirement of law insofar as county governing bodies, county boards of education and the State of Alabama are concerned in paying employees for periods of leave granted while serving on jury duty; that is, must such agencies deduct from the salary paid employees the amount collected by such employees as compensation for serving on jury duty?"

Act No. 619, Acts of Alabama 1969, page 1126 (Title 30, Section 7(1), Code of Alabama 1940, Recompiled 1958, 1969 Cumulative Pocket Parts), provides in pertinent part as follows:

" . . . Notwithstanding the excused absence as herein provided, **any full-time employee shall be entitled to his usual compensation** received from such employment **less the fee** or compensation he received for serving as such juror. . . ." (Emphasis supplied.)

As I understand your question, some agencies of the county and state have interpreted this act as **requiring** the agency to deduct from the salary paid employees the amount collected by such employees as

compensation for serving on jury duty. This has been done on the assumption that Act No. 619 was a maximum amount that could be paid by a public agency to an employee while serving on jury duty. It is my opinion that this position is incorrect. Act No. 619, *supra*, provides for, in my opinion, a minimum compensation that may be paid any employee while serving on jury duty and does not act as a repeal or modifier of those laws authorizing the various public agencies to fix by rule or by regulation or by contract the compensation for their employees and to establish special leave for such employees. Cf. Title 52, Section 136, Code of Alabama 1940, Recompiled 1958, and the provisions of the State Merit System provided under Title 55 of the Code, *supra*.

I am, thus, of the opinion that a public agency may, pursuant to its rules and regulations or contract of employment, provide for special leave for its employees during the time such employee is serving on jury duty and pay such employee his usual full compensation not deducting the fee or compensation the employee receives for serving as a juror.

If I may be of any further assistance, please let me know.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

August 10, 1971

Honorable LeRoy Brown, Superintendent
State Department of Education
State Office Building
Montgomery, Alabama 36104

Schools—City Boards of Education—County Boards of Education—Expenses.

State Statute limiting travel expenses does not apply to city & County Boards of Education.

Opinion by Assistant Attorney General Madison.

Dear Dr. Brown:

I have your letter of August 5, 1971, which is as follows:

“Act No. 470, enacted in the 1969 Regular Session of the Legislature, regulates the payment of expenses for official state travel. This Act does not explicitly refer to travel of personnel employed by local city and county boards of education. Your opinion as to the application of this Act to the travel of

personnel employed by local boards of education would be appreciated."

It is my opinion that Act No. 470, enacted Regular Session 1969, does not apply to travel expenses of personnel employed by city and county boards of education.

Cordially yours,

WILLIAM J. BAXLEY
Attorney General

August 11, 1971

Honorable W. C. Kingsbery, Administrator
Wiregrass Hospital
Geneva, Alabama 36340

Counties—Hospitals—Funds.

Statute of Limitations is applicable to hospital accounts.

Opinion by Assistant Attorney General Madison.

Dear Mr. Kingsbery:

In your letter of August 4, 1971, you state the following:

"We have been informed that a county owned and county operated hospital, branch of the State, accounts are not applicable to the Statute of Limitations law."

It is my opinion that the Statute of Limitations is applicable to such county operated hospital, and if the period stated in the applicable statute has run, the account would not be collectible if the limitations of the statute is raised by the debtor.

Cordially yours,

WILLIAM J. BAXLEY
Attorney General

August 12, 1971

Honorable A. W. Steineker, Jr.
Examiner of Public Accounts
608 Madison Avenue
Montgomery, Alabama 36104

District Attorneys—Examiner of Accounts—Expenses—
Funds.

District Attorneys and Investigators are subject to \$15.00 per day maximum on in-state travel.

Opinion by Assistant Attorney General Clark.

Dear Mr. Steineker:

This will acknowledge your request for opinion as to travel expenses of district attorneys and those investigators whose salaries are paid partially or totally with State Omnibus Crime Control Funds.

My answer to your first question is that a district attorney whose travel on official business takes him out of his circuit, but within the State, is subject to the fifteen-dollar maximum as set out in Act No. 470, Regular Session 1969, Page 912.

This answers your second question. The excess over fifteen dollars a day may not be paid out of the solicitor's fund. The purpose of Act No. 470, supra, was to provide the maximum in-state travel payment as stated in Section 1 of said Act.

Investigators hired by the district attorney and whose salaries are paid partially or totally with the State Omnibus Crime Control Funds are likewise subject to the maximum travel expense as set out by Act No. 470, supra, when they are traveling on official business for the State. See Section 4 of said Act.

Yours very truly,

WILLIAM J. BAXLEY
Attorney General

August 17, 1971

Mr. Andrew L. Kaetz
Director of Finance

Birmingham Board of Education
Post Office Drawer 10007
Birmingham, Alabama 35202

Taxation—Licenses—Leases

The rental tax levied by Act No. 96, Special Session 1971 is not a consumer tax and cannot be collected as a tax by the lessor from the lessee. The economic burden of part of the tax may be passed on to the lessee by increasing the rental charge.

Fixed price or rental contracts with county and municipal agencies may not be increased during the term of the contract or lease. Section 68, Constitution of Alabama 1901.

The method used by a lessor of invoicing rental charges to a lessee cannot make the lessee a taxpayer and the lessor a tax collector.

The rental tax is measured by the gross proceeds received by the lessor regardless of how the invoice is made out.

Opinion by Assistant Attorney General Livingston.

Dear Sir:

Your request for an opinion dated August 5, 1971, is as follows:

"This is to request your opinion as to whether or not Boards of Education are exempt or subject to the above tax as a lessee.

"I am enclosing a copy of an invoice on which this tax is added for rental of steel scaffold. This particular invoice is for a small amount, but we do rent heavy equipment and data processing equipment which runs into several thousand dollars.

"Further, if we are subject to this tax, will this affect our exempt status in connection with sales and use taxes on materials and supplies purchased by the Board."

The tax levied by Act No. 96, Special Session 1971, on the leasing of tangible personal property is not a consumer tax and cannot be collected from the lessee as a tax. The tax is levied on the lessor. For administrative purposes, Section 5 of Act No. 96, *supra*, adopts and incorporates the following sections of Act No. 100, Second Special Session 1959 (the sales tax law): Sections 5 to 21, inclusive, Sections 23, 25 and Section 27 to 30, inclusive. Section 24 of Act No. 100, *supra*, which is not adopted or incorporated in Act No. 96, is the section which makes the state sales tax a consumer tax and requires the sales tax to be collected from the purchaser by the seller.

Therefore, it is my opinion that leases of tangible personal property to the state, counties, cities, the federal government or any agencies thereof are subject to the rental tax levied by Act No. 96, *supra*. It is my understanding from a telephone conversation with you that the rental of the steel scaffold for which you have been invoiced is not under a fixed rental contract for a definite term. Therefore, the Birmingham Board of Education can legally pay the full amount of the invoice attached to your letter. **Alabama v. King and Boozer**, 314 U.S. 1, 62 S. Ct. 43.

The invoice referred to has a stamp thereon which reads as follows: "This invoice includes 26c gross receipts rental tax." I am advised by Revenue Department officials that numerous inquiries have been received as to how a lessor is to make out his invoices to his lessee for purposes of the rental tax. The Department of Revenue has no authority to direct a lessor in this regard; that is a matter between the lessor and lessee. The lessor can merely show on his invoice the rental charge and absorb the rental tax of 4%; or he can show on his invoice (like

the one above) one figure which includes both the amount of rent and the 4% rental tax measured by that amount of rent; or he may show separately from the rent an amount equal to the 4% rental tax. The fact remains that the tax due the state is 4% of the total gross proceeds received by the lessor as reflected by the invoice. Stating the amount equal to the tax separately from the amount of rent or including the tax in the total charge does not mean that the lessor is collecting the tax, as such, from the lessee. Under the law, Act No. 96, supra, the rental tax cannot be collected from the lessee as a tax. The lessor cannot change the law by showing the tax separately on his invoice or including it in the total rent. He is merely passing the economic burden of part of the tax on to the lessee by increasing the rental charge. **Alabama v. King and Boozer**, supra. Of course, where a contract specifies a fixed rental charge which cannot be changed during the term of the lease, the economic burden of the tax cannot be passed on to the lessee thereby changing the rental charge. In this situation, the lessor must absorb the rental tax unless the rental charge specified in the contract is changed by agreement of the parties. Fixed price or rental contracts with county and municipal agencies may not be increased during the term of the contract or lease. Section 68, Constitution of Alabama 1901.

The Supreme Court of Alabama in the case of **Pure Oil Co. v. State**, 244 Ala. 258, 12 So. 2d 861, 148 ALR 260, stated:

"In essence appellant seeks deductions from his 'gross sales' for other items of taxation levied against him and paid by him. None of these items are levied against the purchaser. He is not the taxpayer. **Appellant could not collect a tax from him, as such.** They are unlike our sales tax upon retailers. **True, the economic burden of the tax is generally passed on to the purchaser, and finally to the consumer. We make no criticism of making invoices disclose the tax burdens of the seller, rendering the public tax-conscious, maybe reacting on legislative bodies when framing tax laws.** But in fact and in law these other tax items are legal obligations of appellant, constituting, in economic sense, part of the overhead of the seller's business, as does the tax here sued for. **Invoices or bookkeeping cannot change the fact that the purchaser is paying the sales price fixed by the seller, nothing more or less. They cannot stipulate the purchaser into the position of a taxpayer and the seller into the position of a tax collector.** The tax is payable to the State only, and by the seller. In the absence of statute authorizing such deductions, the 'gross sales' must include what the words import, namely, the gross prices paid for the products named when purchased in wholesale quantities as defined by the statute." (Emphasis added)

The Alabama Supreme Court also stated in the case of **Merchants Cigar & Candy Co. v. City of Birmingham**, 245 Ala. 587, 18 So. 2d 137, as follows:

"... There is no law or ordinance which requires him to collect a similar amount from the purchaser by adding it to the sales price, or otherwise, as is required under the General Sales Tax law. Section 776, Title 51, Code of 1940 . . . **The collection of it as a tax from the purchaser was appellant's own system not required by the State Revenue Department, nor by law or ordinance and has no effect on the instant question.** Pure Oil Co. v. State, 244 Ala. 258, 12 So. 2d 861, 148 A.L.R. 260. The tax is levied on the seller as any other tax against him. **He could absorb the amount of it without increasing the sale price. There is no law which directs him to pass it on as a tax to his purchaser.** But 'the price is the total sum paid for the goods. **The amount added because of the tax is paid to get the goods and for nothing else. Therefore it is part of the price.**' Lash's Products v. United States, 276 U.S. 175, 49 S. Ct. 100, 73 L. Ed. 251." (Emphasis added.)

In view of the above, it is my opinion that the lessor can make out his invoices any way he chooses for purposes of the rental tax levied by Act No. 96, supra. However, he cannot by any method of invoicing or bookkeeping make the lessee a taxpayer and the lessor a tax collector. The rental tax is measured by the total gross proceeds received by the lessor regardless of how the invoice is made out.

The above ruling will not affect in any way your exempt status with respect to sales and use taxes on purchases of tangible personal property made by the Birmingham Board of Education. Such purchases are still exempt by the provisions of Section 33(i), Act No. 100, Second Special Session 1959, as amended.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

August 17, 1971

Honorable Reuben E. Wheelis
Director, Alabama State Docks Department
P. O. Box 1588
Mobile, Alabama

State & State Departments—Funds—United States

State Docks Department has no authority to negotiate loans or grants with U. S. Government.

Opinion by Assistant Attorney General Hall.

Dear Mr. Wheelis:

Reference is made to your letter of August 12, 1971, which is as follows:

"The Alabama State Docks Department is currently preparing to engage in serious discussions with various agencies of the United States Government to obtain Federal grants for technical and developmental assistance.

"Code of Alabama, Title 38, Section 45(5), seems to indicate that we would encounter no problem with a Federal grant.

"Code of Alabama, Title 38, Sections 45(7), places certain restrictions upon loans.

"We therefore request an official opinion from your office as to the legality of negotiating an arrangement with the Federal Government involving direct loan or combination grant/loan between the Alabama State Docks Department and any agency of the United States Government."

Your attention is invited to the fact that Title 38, Section 45(5), Code of Alabama 1940 (Recompiled 1958), was repealed by Act No. 40, Second Special Session 1959, page 208.

I find nothing in the subsequent Acts which authorizes the Alabama State Docks Department to accept grants of money or property from the United States Government or any of its agencies as was previously provided.

However, Title 55, Section 180(1), Code of Alabama 1940 (Recompiled 1958), provides as follows:

"The governor is hereby authorized and empowered to accept from the federal government or any agency or instrumentality thereof, in the name of and for the state of Alabama, grants and advances of funds and real or other personal property for any purpose of the state government not contrary to the Constitution of Alabama.

"The governor is further authorized and empowered, insofar as is not specifically prohibited by the Constitution and the then existing statutes, to meet and to require, by his executive order, any other agency or instrumentality of the state government to meet the terms and conditions imposed on such orders of the President of the United States, or any rule, regulation, or order of any other agency or instrumentality of the federal government, it being the intent of this section to permit the state of Alabama to participate fully in grants and advances made available to it by the federal government.

"The governor may delegate such of his powers and authorities herein provided for, as he deems necessary, to any other agency or instrumentality of the state government."

As you apparently are aware, Title 38, Section 45(7), Code of Alabama 1940 (Recompiled 1958, as amended), provides that revenue securities of the Alabama State Docks Department shall be sold only at public sale for such price or prices as the Director of the Department, with the approval of the Governor, shall determine, with certain restrictions. Similar provisions are contained in the 1963 Act, the 1965 Act, the 1967 Act, and the 1969 Act, each of which authorizes additional bond issues for the construction, etc., of port facilities.

Therefore, in my opinion, the Alabama State Docks Department has no authority to negotiate with the Federal Government involving direct loans or combination grants and loans.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

August 18, 1971

Honorable B. J. McPherson
Attorney for Blount County
Board of Education

229 2nd Avenue, East
Oneonta, Alabama 35121

Schools—County Boards of Education—Blount County
—Elections.

County school board may not pay election expense.

Opinion by Assistant Attorney General Madison.

Dear Mr. McPherson:

In response to your letter of August 9, 1971, relative to having and paying for an election this year on the so-called Seven Mill Education Tax for Blount County, I beg to advise as follows:

1. The election may be held, but the expenses thereof must be paid in accordance with Section 260, Title 52, Code of Alabama 1940, Recompiled 1958. The County Board of Education, in view of this Section, cannot legally pay same.

2. I know of no provisions of law which would prevent another election next year if this year's election is defeated. It would, of course, have to be called as provided by law.

Cordially yours,

WILLIAM J. BAXLEY
Attorney General

August 23, 1971

Honorable Thornton Fleming

Chairman

Morgan County Commission

Decatur, Alabama 35601

Bids—Contracts—Counties—Morgan County—Words and Phrases

Location of business office and resident responsible bidder defined.

Opinion by Assistant Attorney General Lawley.

Dear Sir:

This letter is in response to your letter dated June 8, 1971 which asks several questions pertaining to what constitutes a resident responsible bidder under the competitive bid law found in Act No. 217, Acts of Alabama, Special Session 1967.

Your first question is whether it is necessary that the place of business in your county be the principal place of business. Your question is answered in the negative. See Quarterly Report of the Attorney General, Volume 132, page 17.

Your second question is whether a place of business in your county consisting only of an office and clerical help would qualify where the material to be purchased is shipped in from another place. Your question is answered in the affirmative. The term "resident responsible bidder" has been defined as a person, firm or corporation deemed to be a responsible bidder, having a place of business within the county where the awarding authority is the county or an instrumentality thereof. See Quarterly Report of the Attorney General, Volume 132, page 17. If a business has an office and clerical help located within your county, then said business qualifies as a resident responsible bidder under Act No. 217, Acts of Alabama, *supra*.

Your third question is whether a salesman who lives within the county and uses his home as an office would qualify as a resident responsible bidder. This question is answered in the affirmative provided that an actual office from which a licensed business is transacted is located in the home. The term "place of business" is not synonymous with residence. A "place of business" means the entire premises to which the public generally is expressly or impliedly invited for the purpose of transacting business with the owner and is simply a location where business is transacted or a shop, office, warehouse, commercial establishment. 32A Words and Phrases 143. If the home office meets these requirements of a "place of business," then it is my opinion that the salesman may be considered a resident responsible bidder under Act No. 217, Acts of Alabama, *supra*.

If I may be of any further assistance please contact me.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

August 24, 1971

Honorable L. R. Driggers
Mayor

City of Dothan
Dothan, Alabama 36301

Municipalities—Salaries—Funds.

City may not grant salary increase during Federal wage
Price Freeze.

Opinion by Assistant Attorney General Gish.

Dear Mr. Driggers:

Reference is made to your request of August 18, 1971, for an opinion of this office in regard to the effect of the recently announced federal freeze on wages on salaries for the employees of the City of Dothan.

Since federal questions are presented, we are today submitting these questions to the United States Department of Treasury. As soon as we receive a reply from said Department, we shall immediately advise you.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

August 31, 1971

Honorable Richard Arthur, Director
Department of Aeronautics
State Highway Building
Montgomery, Alabama 36102

State & State Departments—State Aviation Commission—
Airports.

State Aeronautics Department may receive federal grants
and establish relocation program.

Opinion by Assistant Attorney General Tyson.

Dear Mr. Arthur:

Your request for an official opinion of this office is as follows:

"The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 was signed into law on 2 January, 1971. This Act provides certain benefits for persons or businesses displaced as a result of a federally assisted program, such as the FAAP/ADAP program.

"I am enclosing a brief outline of the salient features of the Act plus a narrative interpretation of Anticipated FAA policies for implementing this program. The following provisions are of particular interest:

"1. Persons/Businesses displaced after January 2, 1971, are eligible for the benefits if the airport sponsor, under local and state laws, is able to participate in the cost of providing such benefits.

"2. After July 1, 1972, FAA cannot approve a project involving displacement unless sponsor assures it can fully comply with the Act.

"3. Prior to July 1, 1972, FAA will pay 100% of the full amount of the first \$25,000.00 cost to the sponsor where sponsor is legally able, under its laws, to fully comply with the Act.

"I would like to know whether, under the laws of the State of Alabama, sponsors have the legal authority to fully comply with the Act."

The answer to your inquiry is in the affirmative as specific authorization has been given the State Department of Aeronautics to receive federal grants and establish appropriate programs under the authority of Title 4, Section 20(27), Subsections 5 and 6, Code of Alabama 1940, Recompiled 1958. I recommend that an appropriate resolution be passed by the State Aeronautics Commission establishing this program.

Sincerely yours,

WILLIAM J. BAXLEY
Attorney General

September 1, 1971

Honorable L. D. Sizemore
Sheriff

Geneva County
Geneva, Alabama 36340

Costs & Fees—Sheriffs—Funds—Opinions, modified, Over-
ruled & Distinguished.

Proper use of pistol permit fees outlined.

Opinion by Assistant Attorney General Webb.

Dear Mr. Sizemore:

I have your request for opinion dated July 14, 1971 in which you request that I review a decision rendered by this office on January 20, 1971 to Honorable J. P. Faulk, Jr., Judge of Probate, Geneva County, holding that funds collected under the provisions of Act No. 75, Acts of Alabama 1967, page 107, must be collected and paid into the general fund of Geneva County as other fees collected by the sheriff under the provisions of Act No. 1170, Acts of Alabama 1969, page 2179.

Act No. 75, *supra*, establishes a Sheriff's Fund in Geneva County and raises the fee for issuance of a permit to carry a pistol to \$5.00 which shall be collected by the Sheriff and credited to this special fund or account and used exclusively by the Sheriff for uniforms, ammunition and equipment or any other purposes for the benefit of the Sheriff's Office or duties.

Section 2 of Act No. 1170 requires all fees, commissions, percentages, allowances, charges and court costs heretofore collectible for the use of the Sheriff to be collected and paid into the general fund of the county.

In an opinion of this office rendered January 15, 1971 to Honorable E. W. Enslen, Chairman, Elmore County Commission, reported in Quarterly Report of Attorney General, Volume 142, at page 8, this office held that, under a local act applicable to Elmore County, pistol permit fees may continue to be paid into the county to the credit of the Sheriff's Fund to be used by the Sheriff for purchase of equipment, materials and supplies as required and that such local act was not affected by the provisions of Act No. 1170, *supra*. The local act applying to Elmore County increased the fee for issuance of a permit to carry a pistol in a vehicle or concealed on or about the person to \$5.00. The fee is collected by the Sheriff and deposited in the County Treasury. Four dollars is to be credited to a special fund or account and may be drawn and used at the discretion of the Sheriff for the purchase of equipment, materials and supplies and for payment of compensation of additional personnel when and as needed in the Sheriff's Department. It is similar to sheriff's funds created by local law in many of the other counties and was held in the opinion to Judge Enslen, *supra*, to be not a fee accruing to the Sheriff for services rendered by him but a fee accruing to the county to be used by the Sheriff in a particular designated manner and, thus, not subject to the provisions of Section 2, Act No. 1170.

In my opinion, our holding in Quarterly Report of Attorney General, Volume 142, to Judge Enslen, *supra*, is a correct statement of law and the same is hereby reaffirmed. The opinion to Judge Faulk, dated January 20, 1971, insofar as the same conflicts with the prior opinion, is hereby withdrawn and overruled. I am of the opinion that those fees collected under the provisions of Act No. 75, *supra* are not affected by Act No. 1170, *supra*, and may, therefore, be collected and paid into the Special Sheriff's Fund and expended in accordance with the act.

If I may be of any further assistance, please let me know.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

September 10, 1971

Honorable V. O. Capps

Mayor

City of Prichard

Prichard, Alabama

Municipalities—Courts—Prisons and Prisoners.

City councilman may not release city prisoner.

Opinion by Assistant Attorney General Gish.

Dear Mr. Capps:

Reference is made to your request for an opinion of this office in regard to your responsibility concerning the remitting of fines and granting of probation to city prisoners.

Title 37, Section 599, Code of Alabama 1940, clearly prescribe your responsibility and authority in this area. Said statute reads, in part, as follows:

"The mayor may remit fines and such costs as are payable to the city or town, and commute sentences imposed by the recorder of court to which an appeal was taken for violations of municipal ordinances, and may grant pardons and paroles, after conviction, for violations of such ordinances, but neither he nor any municipal officer may remit, commute or alter the fines and sentences, or either, imposed by the recorder in the enforcement of state laws under the jurisdiction conferred by section 594 of this title, and he shall report his action to the council or other governing body at the first regular meeting thereof in the succeeding month with his reasons therefor in writing. The mayor may also authorize and direct the discharge on parole of any person under sentence for violation of a municipal ordinance without granting a pardon, and prescribe the terms upon which such person so paroled shall have his sentence suspended. . . ."

You also ask whether a member of a municipal council has the authority to release a city prisoner. In answer to this question, you are advised that a councilman has no authority to release a city prisoner either before or after conviction.

We trust that this opinion furnishes the desired information.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

September 13, 1971

Honorable James T. Beeland

Probate Judge

Butler County

Greenville, Alabama 36037

Officers & Offices — ABC Act — Records — Butler County.

Members of Public may inspect wet-dry petition at reasonable time and place.

Opinion by Assistant Attorney General McQueen.

Dear Judge Beeland:

I have your letter of recent date in which you state that under the provisions of Title 29, Section 63, Code of Alabama 1940, a petition has been filed in your office to determine the sentiment of the people of your county as to whether or not alcoholic beverages can be legally sold in the county.

You further state that you have been requested by certain representatives of the county for permission to inspect the petition for the purpose of ascertaining the names of the signers of the petition.

You request an opinion of this office as to whether or not this petition is a public record so as to make it available for inspection under the provisions of Title 13, Section 292, Code of Alabama 1940.

In my opinion, this petition is a public record and the public generally has a right to a reasonable and free examination thereof, except where the purpose is purely speculative or from idle curiosity, or unduly interferes or hinders the discharge of your office duties. **Holcombe v. State**, 240 Ala. 590, 200 So. 739.

Yours very truly,

WILLIAM J. BAXLEY
Attorney General

September 13, 1971

Honorable Claude D. Kelley

Director of Conservation

Alabama Department of Conservation

64 North Union Street

Montgomery, Alabama 36104

State and State Departments — Conservation Department — Criminal Law.

Conservation officers requiring inspection of shrimp nets is not self incrimination.

Opinion by Assistant Attorney General Dickert.

Dear Mr. Kelley:

I have your letter of August 25, 1971 wherein you request an opinion of this office on the following question:

“When shrimp trawlers are stopped by Conservation Officers, are their constitutional rights violated by requiring them to raise their nets for inspection? Specifically, is this a violation of the right against self-incrimination?”

Your questions are answered in the negative. The constitutional privilege against self-incrimination may bar compelling communications or testimony but does not extend to production of real or physical evidence. Requirements that shrimpers raise their nets for inspection to ascertain whether they comply with state laws is a valid exercise of the state's police power and does not violate constitutional protections.

If we may assist you further, please let us know.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

September 14, 1971

Honorable Lewis Headley
Member

House of Representatives

P. O. Box 471

Clanton, Alabama 35045

Counties — Sheriffs — Salaries.

Act increasing salary after Federal Wage Freeze may not take effect during same.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

I have your request for an opinion of this office as to whether or not the increase in salary of the Deputy Sheriff of Chilton County comes within the purview of the Federal Wage Freeze.

It appears that this local bill was passed in June, 1971, but did not become effective until after August 15, 1971, the date upon which the freeze became effective.

I have been advised by the Internal Revenue Service that in their opinion the increase in salary of this particular person comes within the Federal Order and is frozen.

Yours very truly,

WILLIAM J. BAXLEY
Attorney General

September 16, 1971

Honorable Harry M. Philpott, President
• Auburn University
Auburn, Alabama

Schools — Colleges — and Universities.

Term "public school" does not include institutions of higher learning.

Opinion by Assistant Attorney General Madison.

Dear Dr. Philpott:

Act No. 49, Special Session 1971, relating to the observance of Sundays, holidays, etc., makes reference to Veterans Day as a holiday. The Act provides that Veterans Day shall be observed by the closing of all state, county, and municipal offices, and the public schools on such day.

It is my opinion that "public schools" as used in Act No. 49, means the elementary and high schools in this State and does not include institutions of higher learning. Section 94, Title 52, Code of Alabama 1940, Recompiled 1958; **Elsberry v. Seay**, 83 Ala. 614, 3 So. 804; **Opinion of the Justices**, 229 Ala. 98, 155 So. 699.

Cordially yours,

WILLIAM J. BAXLEY
Attorney General

September 20, 1971

Honorable Pat Miller, Jr.
President
City Council
City of Huntsville
Huntsville, Alabama

Municipalities — Contracts — Funds.

City of Huntsville may enter contract with Central City Assistants.

Opinion by Assistant Attorney General Gish.

Dear Mr. Miller:

Your request for an official opinion dated September 8, 1971, is as follows:

"Pursuant to the provisions of the Code of Alabama, Title 55, Section 240, we respectfully request your opinion in writing to the following question of law.

"The Central City Association of Huntsville, Inc., is a non-profit corporation, organized and existing under the laws of the State of Alabama, which is involved in the promotion and development of the City of Huntsville. Attached to this request is a copy of a contract which the City of Huntsville proposes to enter into with the Central City Association of Huntsville. We respectfully request your opinion as to whether the expenditure of municipal funds under the terms of this contract is legally permissible."

Code of Alabama 1940, Title 37, Section 471(3), grants to every incorporated city or town the power to set aside, appropriate and use municipal funds or revenues for the purpose of developing, advertising and promoting their resources. It is my opinion that the proposed contract between the City of Huntsville and the Central City Association of Huntsville, Inc. comes within the meaning of this statute and is, therefore, a legal expenditure of municipal funds.

This office ruled in an opinion reported in Quarterly Report of Attorney General, Volume 132, page 45, that the City of Montgomery could pay certain tax revenues to the Montgomery Area Chamber of Commerce for purposes similar to those in the proposed agreement between the City of Huntsville and the Central City Association of Huntsville, Inc. I can find no material difference between the expenditure you propose and the expenditure by the City of Montgomery.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

September 21, 1971

Honorable Berneal Brock
Judge of Probate
Lamar County
Vernon, Alabama 35592

Criminal Law — Courts — Warrants — Licenses — Lamar
County.

Each criminal charge must be on a separate warrant.

Opinion by Assistant Attorney General Price.

Dear Judge Brock:

You have requested an opinion as to whether or not a person can legally be charged for no driver's license, driving while intoxicated, and violation of the prohibition law all in one warrant.

It is my opinion that each charge must be made on a separate warrant. An arrest warrant is to be specific and clearly state **the charge** by name or in a manner from which it can be clearly inferred. Title 15, Section 123, Code of Alabama 1940 (Recomp. 1958). A warrant which charges several separate crimes can hardly be said to be specific enough to meet the requirements of the above section.

I hope that I have answered your questions and further hope that you will seek our assistance whenever it is needed.

Sincerely,

WILLIAM J. BAXLEY
Attorney General

September 22, 1971

Honorable Guerry Pruett, Director
State of Alabama Highway Department
Montgomery, Alabama 36104

State and State Departments — Highway Department — Eminent Domain.

State may not apportion condemnation award.

Opinion by Assistant Attorney General Norton.

Dear Mr. Pruett:

Your request for an opinion of this office dated September 8, 1971, is as follows:

"Title 23, Section 78 (49) through (57), Code of Alabama 1940 (Recompiled 1958) 'Relocation Assistance Act' provides the extent to which Alabama can implement the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. Title III, Section 305 of the Uniform Real Property Acquisition Policy states, 'In acquiring real property it will be guided, to the greatest extent practicable under state law, by the land acquisition policies in Section 301 and the provisions of Section 302'.

"The Federal Highway Administration has requested that if there is any part of Section 301 and 302 that the State cannot comply with that we should obtain an opinion from the Attorney General by September 30, 1971, citing cognizant and reviewable legal authority supporting such opinion.

"Please furnish an opinion whether there are any provisions of Section 301 and 302 to which the State cannot legally comply."

Title III, Section 305 of the Uniform Real Property Acquisition Policy states, "In acquiring real property it will be guided, to the greatest extent practicable under state law, by the land acquisition policies in Section 301 and the provisions of Section 302." You asked the question, "Is there any part of Section 301 and 302 in which the State cannot legally comply?"

The power of eminent domain is limited and governed by sections 23 and 235 of the Alabama Constitution of 1901. Section 23 of the Alabama Constitution provides that:

"Private property shall not be taken for, or applied to public use, unless just compensation be first made therefor."

Title 19, Chapter 1, Code of Alabama 1940 (Recompiled 1958), provides the procedure the State must follow in condemning land for a public use. The burden is on the State to prove necessity for the taking and the property taken must be particularly described in the application for Order of Condemnation.

The rule for compensation in condemnation proceedings where only part of a tract is taken, is that owner is entitled to difference between value of entire tract immediately before taking and value of part remaining after taking, giving effect to any enhancement in value to part remaining in case condemnation was for public highway. Title 19, Section 14, Code of Alabama 1940; **State of Alabama vs. Mary S. Walker as Executrix, et al.**, 200 So. (2d) 482.

In determining value of property after taking, jury should consider any factor or circumstances which would depreciate the value in any way, and this includes any effect that the completed project for which the land is condemned may produce on the remaining tract. Title 19, Section 14, Code of Alabama 1940; **State of Alabama vs. Mary S Walker as Executrix, et al.**, 200 So. (2d) 482.

Under the present Alabama law, the State cannot comply with Section 301(9) concerning the acquisition of an uneconomical remnant, if condemnation becomes necessary.

Apportionment of award in condemnation proceeding between fee owner and lessees, mortgagees or any other persons having interests in the condemned property is a matter of dispute between themselves after final Order of Condemnation and total amount of compensation has been

fixed. Title 19, Sections 26 and 27, Code of Alabama 1940; **Dothan vs. Wilkes**, 114 So. (2d) 237; **State of Alabama vs. Mary S. Walker as Executrix, et al.**, 200 So. (2d) 482.

The State cannot comply with Section 302 (b)(1) as it applies to making separate payment to the tenant.

Yours very truly,

WILLIAM J. BAXLEY
Attorney General

September 22, 1971

Mr. A. W. Steineker, Jr.
Chief Examiner of Public Accounts
State of Alabama
Montgomery, Alabama 36104

Counties — Fiduciaries — Funds — Judges of Probate —
Redemption.

Unclaimed land redemption money deposited by a probate judge in the county treasury under Title 51, Section 311, does not escheat to the State under the provisions of Act No. 63, Acts of Alabama, Special Session 1971.

Opinion by Assistant Attorney General Lawley.

Dear Sir:

Your request for an opinion from this office, dated September 13, 1971, is as follows:

“An examiner has raised a question as to whether land redemption money deposited by a probate judge in the county treasury under Title 51, Section 311, Code of Alabama Recompiled 1958, will escheat to the State if unclaimed under Act No. 63, Acts of Alabama, Special Session 1971. Your answer to this question will be appreciated.”

Your question is answered in the negative:

Title 51, Section 311, *supra*, states:

“If the lands redeemed were bid in by any person other than the state, the redemption money must be deposited by the judge of probate in the county treasury, and there kept separate and apart from the general funds of the county,”

Title 58, Sections 30-38, Code of Alabama 1940, Recompiled 1958, deals with fiduciary funds in the hands of officials. Title 58, Section 37, *supra*, states:

"If at any time it should appear to the court, or be made known to the court, that any balance has been in the hands of any officer for a period of five years and the same remains unclaimed, it may make an order directing the same to be paid into the treasury of said county, and a separate account shall be kept of all such payments and so designated as to identify each transaction."

Act No. 63, Acts of Alabama, *supra*, Section 9, states that all tangible and intangible personal property that is held or owing in the State in the ordinary course of the holder's business and has remained unclaimed by the owner for more than seven years after it became payable or distributable is assumed to be abandoned. Section 31 of Act No. 63, *supra*, exempts Title 58, Sections 30-38, *supra*, from the provisions of this act. It has been common practice, and a policy prescribed by the Department of Examiners of Public Accounts in a memorandum dated March 26, 1970, that land redemption funds held by judges of probate in county treasuries under Title 51, Section 311, *supra*, should be treated as fiduciary funds and, after remaining unclaimed for over five years, then should be paid into the county treasury pursuant to Title 51, Section 37, *supra*. See definition of fiduciary funds in Title 58, Section 31, *supra*. Therefore, it is my conclusion that unclaimed land redemption funds held by probate judges pursuant to Title 51, Section 311, *supra*, do not escheat to the State since these are fiduciary funds held for another under Title 58, Sections 30-38, and are expressly exempted from the provisions of Act No. 63, *supra*.

If I may be of any further assistance please contact me.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

September 23, 1971

Colonel Walter L. Allen
Director

Department of Public Safety
500 Dexter Avenue
Public Safety Building
Montgomery, Alabama 36104

State and State Departments — Public Safety Department — Dead Bodies — Courts.

Law Officer may request blood sample from dead body.

Opinion by Attorney General Baxley.

Dear Colonel Allen:

On June 9, 1971, this office rendered a formal opinion to you stating that a law enforcement officer requesting a sample of blood taken by a mortician, embalmer or assistant from the body of a deceased person may be civilly liable.

After further consideration of this response it is my conclusion that the previous opinion is due to be overruled and withdrawn.

The courts of both our State and Nation have recognized the legitimate interest which states have in blood chemistry analysis. In **Schmerber v. California**, 384 U. S. 757, 86 S. Ct. 1826, 16 L. Ed. 2d 908, the Supreme Court of the United States held that blood samples may be taken even over the protest of one suspected of the commission of an offense in which the blood alcohol analysis would be relevant. Of course, in your request you specifically refer to a deceased donor; however, the results of an analysis might still be relevant to prosecutions without regard to the death of the donor.

In **Breithaupt v. Abram**, 352 U. S. 432, 77 S. Ct. 408, 1 L. Ed. 2d 448, the same Court stated:

"Modern community living requires modern scientific methods of crime detection lest the public go unprotected. The increasing slaughter on our highways, most of which should be avoidable, now reaches the astounding figures only heard of on the battlefield. The States, through safety measures, modern scientific methods, and strict enforcement of traffic laws, are using all reasonable means to make automobile driving less dangerous.

"As against the right of the individual that his person be held inviolable, even against so slight an intrusion as is involved in applying a blood test of the kind to which millions of Americans submit as a matter of course nearly every day, must be set the interests of society in the scientific determination of intoxication, one of the great causes of the mortal hazards of the road. And the more so since the test likewise may establish innocence, thus affording protection against the treachery of judgment based on one or more of the senses. Furthermore, since our criminal law is to no small extent justified by the assumption of deterrence, the individual's right to immunity from such invasion of the body as is involved in a properly safeguarded blood test is far outweighed by the value of its deterrent effect due to public realization that the issue of driving while under the influence of alcohol can often by this method be taken out of the confusion of conflicting contentions."

For these reasons your request is answered in the negative and my former opinion to you is hereby overruled and withdrawn.

Sincerely,

WILLIAM J. BAXLEY
Attorney General

September 24, 1971

Honorable L. R. Driggers
Mayor
City of Dothan
Dothan, Alabama

Municipalities — Salaries — Funds.

City may not grant salary increase during Federal Wage Price Freeze.

Opinion by Assistant Attorney General Gish.

Dear Mr. Driggers:

Reference is made to your request of August 18, 1971, for an opinion of this office concerning the Federal Wage-Price Freeze which became effective on August 16, 1971. You ask whether a 5% increase on the base salaries of all municipal employees, which was approved prior to August 16, 1971, and which was to become effective on the first payroll payable in September, 1971, may be paid during such Wage-Price Freeze. You also ask whether automatic "step increases" under your Merit System may be paid during such Wage-Price Freeze.

Both your questions are answered in the negative. This conclusion is based upon a letter received by this office from the Internal Revenue Service of the United States Treasury Department, dated September 15, 1971, a copy of which is enclosed.

Very truly yours,

WILLIAM J. BAXLEY
Attorney General

I N D E X

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PERIOD FROM JULY 1, 1971 THROUGH SEPTEMBER 30, 1971

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